

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption)	NOTICE OF PUBLIC HEARING
of new rules I through X)	ON PROPOSED ADOPTION
pertaining to storm water)	
discharges)	(WATER QUALITY)

TO: All Concerned Persons

1. On November 18, 2002 at 9:00 a.m., in conjunction with the hearing for MAR Notice No. 17-175, the Board of Environmental Review will hold a public hearing in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., November 6, 2002, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@state.mt.us.

3. The proposed new rules provide as follows:

NEW RULE I PURPOSE AND SCOPE (1) This subchapter is intended to be applied together with ARM Title 17, chapter 30, subchapters 12 and 13 to establish a system for regulating discharges of potential pollutants from point source discharges of storm waters into surface waters. This subchapter and subchapter 13 of ARM Title 17, chapter 30, which regulate storm water discharges through Montana pollutant discharge elimination system (MPDES) general permits, permit authorizations, and notices of intent, are intended to be compatible with the national pollutant discharge elimination system (NPDES) as established by the United States environmental protection agency pursuant to section 402 of the federal Clean Water Act (CWA), 33 USC 1251, et seq. Except as expressly modified in this subchapter, all requirements in ARM Title 17, chapter 30, subchapters 12 and 13 remain effective pertaining to point source discharges of storm water.

(2) The rules in this subchapter pertain to point source discharges of storm water that do not contain routine process wastewater and that do not contain non-storm water discharges

except for the potential non-storm water discharges from MS4s that are listed in [NEW RULE VII(6)(c)(iii)]. ARM Title 17, chapter 30, subchapter 13 contains additional requirements pertaining to point source discharges of storm water that routinely contain process wastewater or non-storm water discharges (other than the potential non-storm water discharges for MS4s listed in [NEW RULE VII(6)(c)(iii)]) that are regulated using an individual MPDES permit.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

REASON: In this rulemaking, the department is codifying in state rules certain federal storm water requirements that have previously been incorporated by reference in state rules at ARM 17.30.1303 and ARM 17.30.1332 ("phase I" rules), as well as some federal phase I rules that were never incorporated into state rules. The department is also promulgating new storm water rules that will conform to recent federal rules applicable to storm water discharges from certain municipalities, small construction activities, and industries with "no exposure" of regulated activities to storm water runoff ("phase II" rules). The federal phase I and II rules have been adopted by the U.S. environmental protection agency (EPA), and are found at 40 CFR 122.26. The department is required by federal law to adopt storm water rules that are not less stringent than the EPA storm water rules.

Promulgating the existing state phase I rules and the new state phase II rules together in a new subchapter of the Montana Administrative Rules, rather than simply incorporating them by reference from the federal rules or amending an existing subchapter of the Montana rules, is necessary to make the rules easier for the regulated community and for the department to locate and to apply.

Storm water runoff from lands modified by human activities can harm surface water resources and can cause or contribute to exceedances of water quality standards. Storm water runoff may contain or mobilize high levels of contaminants, such as sediment, suspended solids, nutrients (phosphorus and nitrogen), heavy metals and other toxic pollutants, pathogens, toxins, oxygen-demanding substances and floatables. As set out in more detail in the rationale statements below, the rules in this rulemaking are necessary to prevent such impacts to surface water.

The storm water requirements in this rulemaking will typically be implemented through general permits issued under the Montana pollutant discharge elimination system (MPDES). The rules also provide for permit coverage for storm water

discharges under an individual, as opposed to a general, MPDES permit if necessary. As stated in new rule I, all provisions of Title 17, chapter 30, subchapter 12 (MPDES standards) and subchapter 13 (MPDES permits) apply in this subchapter unless expressly indicated otherwise.

NEW RULE II DEFINITIONS In this subchapter, the following terms have the meanings or interpretations indicated below and shall be used in conjunction with and are supplemental to those definitions contained in 75-5-103, MCA.

If not defined in this rule, terms used in this subchapter have the meanings set out in the definitions in ARM Title 17, chapter 30, subchapter 13.

(1) "Best management practices (BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of state waters. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(2) "Discharge of a pollutant" and "discharge of pollutants" each means any addition of any pollutant or combination of pollutants to state waters from any point source. This definition includes additions of pollutants into water of the state from surface runoff that is collected or channeled by man and discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person that do not lead to a treatment works. This term does not include the addition of pollutants by an indirect discharger.

(3) "Discharge monitoring report (DMR)" means the department uniform form for the reporting of self-monitoring results by permittees.

(4) "Facility or activity" means any MPDES point source or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the MPDES program.

(5) "Final stabilization" means the time at which all soil-disturbing activities at a site have been completed and a vegetative cover has been established with a density of at least 70% of the pre-disturbance levels, or equivalent permanent, physical erosion reduction methods have been employed. Final stabilization using vegetation must be accomplished using seeding mixtures or forbs, grasses, and shrubs that are adapted to the conditions of the site. Establishment of a vegetative cover capable of providing erosion control equivalent to pre-existing conditions at the site will be considered final stabilization.

(6) "General permit" means an MPDES permit issued under ARM 17.30.1341 authorizing a category of discharges under the Act within a geographical area.

(7) "Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to an MPDES permit (other than the MPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

(8) "Infiltration" means water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include inflow.

(9) "Inflow" means water other than wastewater that enters a sewer system (including sewer service connections) from sources including, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include infiltration.

(10) "Major municipal separate storm sewer outfall" or "major outfall" means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or, for municipal separate storm sewers that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of two acres or more).

(11) "Montana pollutant discharge elimination system (MPDES)" means the system developed by the board and department for issuing permits for the discharge of pollutants from point sources into state waters. The MPDES is specifically designed to be compatible with the federal NPDES program established and administered by the EPA.

(12) "MS4" means a municipal separate storm sewer system.

(13) "Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) that discharges to surface waters and is:

(a) owned or operated by the state of Montana, a governmental subdivision of the state, a district, association, or other public body created by or pursuant to Montana law, including special districts such as sewer districts, flood control districts, drainage districts and similar entities, and designated and approved management agencies under section 208 of the federal Clean Water Act, which has jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, and is:

(i) designed or used for collecting or conveying storm water;

(ii) not a combined sewer; and

(iii) not part of a publicly owned treatment works (POTW) as defined in ARM Title 17, chapter 30, subchapter 13.

(14) "Outfall" means a point source, as defined in this subchapter, at the point where a municipal separate storm sewer discharges to surface waters. The term does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances that connect segments of the same stream or other surface waters and that are used to convey surface waters.

(15) "Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit or economically mineable geologic material (e.g., coal), excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

(16) "Owner or operator" is defined at 75-5-103, MCA.

(17) "Permit" means an authorization or license issued by EPA or an approved state to implement the requirements of this rule and 40 CFR Parts 123 and 124. The term includes an NPDES general permit (ARM 17.30.1341). The term does not include any permit that has not yet been the subject of final agency action, such as a "draft permit" or a "proposed permit".

(18) "Point source" means any discernible, confined, or discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

(19) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural wastes discharged into water. The terms "sewage," "industrial

waste," and "other wastes" as defined in 75-5-103, MCA, are interpreted as having the same meaning as pollutant.

(20) "Process wastewater" means any water that, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

(21) "Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

(22) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

(23) "Small municipal separate storm sewer system" means:

(a) small MS4s, and portions of them, that are located in the following urbanized areas in Montana as determined by the latest decennial census by the United States census bureau:

- (i) the city of Billings and Yellowstone County;
- (ii) the city of Missoula and Missoula County; and
- (iii) the city of Great Falls and Cascade County;

(b) the following small MS4s serving a population of at least 10,000 as determined by the latest decennial census by the United States census bureau and that are located outside of an urbanized area:

- (i) MS4s located in the city of Bozeman;
- (ii) MS4s located in the city of Butte;
- (iii) MS4s located in the city of Helena; and
- (iv) MS4s located in the city of Kalispell;

(c) MS4s designated by the department pursuant to [NEW RULE V]; and

(d) systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large educational, hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

(24) "Small MS4" means a small municipal separate storm sewer system.

(25) "Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(26) "State waters" is defined at 75-5-103, MCA.

(27) "Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

(28) "Storm water discharge associated with construction activity" means a discharge of storm water from construction activities including clearing, grading, and excavation that

result in the disturbance of equal to or greater than one acre of total land area. For purposes of these rules, construction activities include clearing, grading, excavation, stockpiling earth materials, and other placement or removal of earth material performed during construction projects. Construction activity includes the disturbance of less than one acre of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb one acre or more.

(a) Regardless of the acreage of disturbance resulting from a construction activity, this definition includes any other discharges from construction activity designated by the department pursuant to [NEW RULE III(1)(f)].

(b) For construction activities that result in disturbance of less than five acres of total land area, the acreage of disturbance does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

(c) For construction activities that result in disturbance of five acres or more of total land area, this definition includes those requirements and clarifications stated in (29)(a), (b), (d) and (e).

(29) "Storm water discharge associated with industrial activity" means a discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant.

(a) For the categories of industries identified in this definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters (as defined in this subchapter); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water.

(b) For the categories of industries identified in (e)(ix) of this definition, the term includes only storm water discharges from all the areas (except access roads and rail lines) that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate

products, final products, waste materials, by-products, or industrial machinery are exposed to storm water.

(c) For the purposes of this definition, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product, or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas.

(d) Industrial facilities (including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in (e)(i) through (ix) and (30)) include those facilities designated under the provisions of [NEW RULE III(1)(f)].

(e) The following categories of facilities are considered to be engaging in "industrial activity" for the purposes of this definition:

(i) facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR subchapter N (except facilities with toxic pollutant effluent standards that are exempted under category (e)(ix) of this definition);

(ii) facilities classified as standard industrial classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;

(iii) hazardous waste treatment, storage, and disposal facilities, including those that are operating under interim status or a permit under subtitle C of the federal Resource Conservation and Recovery Act (RCRA);

(iv) landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this definition, or under the definitions of "storm water discharge associated with mining and oil and gas activities," and "storm water discharge associated with construction activity" that will result in construction-related disturbance of five acres or more of total land area) including those that are subject to regulation under subtitle D of RCRA;

(v) facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards including, but not limited to, those classified as standard industrial classification 5015 and 5093;

(vi) steam electric power generating facilities, including coal handling sites;

(vii) transportation facilities classified as standard industrial classifications 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171, which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations.

Only those portions of a facility that are involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or that are otherwise identified under this definition are associated with industrial activity;

(viii) treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, which is used in the storage, treatment, recycling, or reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that is located within the confines of the facility, and which has a design flow of 1.0 mgd or more or is required to have an approved pretreatment program under 40 CFR Part 403. Not included are farm lands, domestic gardens, and lands used for sludge management where sludge is beneficially reused and that are not physically located in the confines of the facility, and areas that are in compliance with section 405 of the federal Clean Water Act; and

(ix) facilities under standard industrial classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221-25, (and which are not otherwise included within (e)(i) through (e)(viii) of this definition).

(30) "Storm water discharge associated with mining and oil and gas activity" means the same as the definition for "storm water discharges associated with industrial activity" except that the term pertains only to discharges from facilities classified as standard industrial classifications 10 through 14 (mineral industry) that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts, or waste products located on the site of such operations. Such facilities include active and inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(1) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, and except for areas of non-coal mining operations that have been released from applicable state or federal reclamation requirements after December 17, 1990); and oil and gas exploration, production, processing, or treatment operations; and transmission

facilities. "Inactive mining operations" are mining sites that are not being actively mined but that have an identifiable owner/operator, but do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim.

(31) "Storm water pollution prevention plan (SWPPP)" means a document developed to help identify sources of pollution potentially affecting the quality of storm water discharges associated with a facility or activity, and to ensure implementation of measures to minimize and control pollutants in storm water discharges associated with a facility or activity. The department determines specific requirements and information to be included in a SWPPP based on the type and characteristics of a facility or activity, and on the respective MPDES permit requirements.

(32) "Surface waters" means any waters on the earth's surface including, but not limited to, streams, lakes, ponds, and reservoirs, and irrigation and drainage systems discharging directly into a stream, lake, pond, reservoir, or other surface water. Water bodies used solely for treating, transporting, or impounding pollutants shall not be considered surface water.

(33) "Total maximum daily load" or "TMDL" is defined at 75-5-103, MCA.

(34) "Uncontrolled sanitary landfill" means a landfill or open dump, whether in operation or closed, that does not meet the requirements for runoff or runoff controls established pursuant to subtitle D of the Montana Solid Waste Disposal Act.

(35) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: New rule II contains definitions of the major terms used in this subchapter. The definitions are necessary to clarify the meaning of the terms and to specifically identify what discharges are regulated by this subchapter. Several key definitions are discussed below.

Subsection (23) defines "small municipal separate storm sewer systems" (MS4s). The federal phase II rules expanded the scope of the storm water program to include small MS4s, which include all MS4s that are not already designated and regulated as a medium or large MS4 under EPA's phase I rules.

However, the federal phase II rules do not require that all MS4s serving populations of less than 100,000 be regulated.

Within "urbanized areas" as defined by the U.S. Census Bureau (areas that have a population over 50,000 and an average population density of 1,000 people per square mile), MS4s must obtain MPDES permit coverage. In Montana, urbanized areas include the City of Billings, portions of Yellowstone County outside the City of Billings, the City of Missoula, portions of Missoula County outside the City of Missoula, the City of Great Falls, and portions of Cascade County located outside the City of Great Falls including Malmstrom AFB.

For areas with a population below 50,000, phase II requires states to establish criteria for use in determining whether MS4s must develop storm water management programs, and the federal rules provide suggested criteria for that purpose. The designation criteria must be applied to cities with a population of at least 10,000. Using the federal designation criteria, the department has determined that municipalities in Montana with a population of 10,000 and greater have the potential to affect water quality as stated above, and are therefore subject to the permit requirements. These municipalities are: the City of Helena, the City of Butte, the City of Bozeman, and the City of Kalispell. These cities typically have a high growth potential. One city has historical mining-related pollutants that may come into contact with storm water. All seven of the cities over 10,000 population have storm water discharges into waterbodies on the 303(d) impaired list. Designating the municipalities identified in this definition is necessary to control the discharge of pollutants from municipal separate storm sewers.

Subsection (28) defines "storm water discharge associated with construction activity". Included within the scope of the definition are construction activities, regulated under existing rules, that result in the total construction-related disturbance of five acres and above. However, as required by federal phase II rules, the term has also been broadened to include construction activities that result in the total construction-related disturbance of at least one acre. Inclusion of the smaller construction activities is necessary to comply with federal rules and to ensure that pollutants from those sites do not contaminate surface waters. In new rule III(5) there is an exemption procedure for certain construction activities that result in the total construction-related disturbance of from one to five acres. Such activities can be exempted from permit requirements based on a showing that there will be limited erosion through rainfall or that storm water controls are provided through other mechanisms.

The proposed definition in subsection (28) differs from the federal rules in that it provides a separate definition for discharges from construction activity. The federal rules include construction activity within the definition of the term "industrial activity". Providing separate definitions does not have substantive effect, but is necessary in order to make the definitions shorter, easier to apply, and consistent with the department's past permitting procedures for storm water discharges from construction activity.

New Rule II provides the equivalent of the federal definition of "storm water discharge associated with industrial activity", except that the definition has been split into two definitions. Facilities or activities whose storm water discharges are associated with major standard industrial classification groups 10 through 14 (mineral industries) have been broken out into a separate definition for "storm water discharge associated with mining and oil and gas activity". The department regulates storm water discharges from these activities through a separate general permit due to the number of these storm water discharges in Montana, together with certain unique technical features associated with the discharge. There are no other significant changes in the definitions from the federal phase I and II rules.

The following two new definitions were created in order to provide clarity, consistency, and understandability of major components and requirements based on the procedures the department uses in permitting storm water discharges.

One new definition is for "final stabilization" which describes what level of site stabilization must be achieved in order to terminate MPDES permit coverage for a storm water discharge associated with construction activity. Based on federal requirements and input from other states' storm water requirements, this definition was developed. The definition is necessary to provide guidance to permittees regarding the meaning of the term.

The second new definition is a definition for "storm water pollution prevention plan" (SWPPP). The development and implementation of a SWPPP is among the most fundamental and important requirements pertaining to most permitted storm water discharges. To assist the regulated community in understanding what a SWPPP is, a general definition is proposed based on language in federal documents.

NEW RULE III PERMIT REQUIREMENT (1) Any person who discharges or proposes to discharge storm water from a point source must obtain coverage under an MPDES general permit or another MPDES permit for discharges:

- (a) associated with construction activity;
- (b) associated with industrial activity;
- (c) associated with mining and oil and gas activity;
- (d) from small municipal separate storm sewer systems that are identified in [NEW RULE II] or designated pursuant to [NEW RULE V];

- (e) for which the department determines that storm water controls are needed based on wasteload allocations that are part of TMDLs that address the pollutants of concern; and

- (f) that the department determines are contributing to a violation of a water quality standard or are significant contributors of pollutants to surface waters.

(2) For point source discharges of storm water identified in (1)(a) through (f) that are routinely composed entirely of storm water, authorization under an MPDES general permit must be obtained pursuant to this subchapter, unless the discharge is covered under an individual MPDES permit that is issued pursuant to ARM Title 17, chapter 30, subchapter 13 to the same owner or operator for other point source discharges.

(3) For point source discharges of storm water identified in (1)(a) through (f) that are not routinely composed of storm water, and that routinely discharge pollutants, coverage under an individual MPDES storm water permit or under an MPDES general permit must be obtained pursuant to ARM Title 17, chapter 30, subchapter 13.

(4) Any person who discharges or proposes to discharge storm water combined with municipal sewage from a point source shall obtain MPDES permits in accordance with the procedures set out in ARM Title 17, chapter 30, subchapter 13 and is not subject to the provisions of this subchapter.

(5) The department may waive the permit requirements in this subchapter for a storm water discharge associated with construction activity that disturbs less than five acres of total land area if either of the following two conditions exist:

- (a) the value of the rainfall erosivity factor ("R" in the revised universal soil loss equation) is less than five during the period of construction activity. The period of construction activity extends through to final stabilization.

The rainfall erosivity factor must be determined using a state-approved method. The owner or operator must certify to the department that the construction activity will take place only during a period when the value of the rainfall erosivity factor is less than five. If unforeseeable conditions occur that are outside of the control of the waiver applicant, and which will extend the construction activity beyond the dates initially applied for, the owner or operator shall reapply for

the waiver or obtain authorization under the general permit for storm water discharges associated with construction activity. The waiver reapplication or notice of intent must be submitted within two business days after the unforeseeable condition becomes known; or

(b) storm water controls are not needed based on a TMDL approved or established by EPA that addresses the pollutants of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for construction sites disturbing less than five acres of total land area for the pollutants of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purposes of this rule, pollutants of concern include sediment, or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator shall certify to the department that the construction activity will take place, and that storm water discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

(6) Prior to October 1, 1994, discharges composed entirely of storm water are not required to obtain an MPDES permit except for:

(a) discharges with respect to which an individual MPDES permit has been issued prior to February 4, 1987; and

(b) discharges listed in (1)(a), (b), (c), and (f), except that, for discharges listed in (1)(a), this requirement applies only to storm water discharges associated with construction activity that will result in construction-related disturbance of five acres or more of total land area.

(7) For storm water discharges designated by the department under (1)(e) and (f), the owner or operator shall apply for a permit within 180 days of receipt of the department's notice of designation, unless the department grants a later date.

(8) Except as provided in (9), if not authorized under a storm water general permit, a permit application or notice of intent must be submitted to the department for stormwater discharges existing as of October 1, 1992 that are associated with:

(a) industrial activity;

(b) mining and oil and gas activity; and

(c) construction activity that will result in construction-related disturbances of five acres or more of

total land area and for which storm water discharges are not authorized by a storm water general permit.

(9) For discharges identified in (8)(a) through (c) that are not authorized by a general or individual MPDES permit, and which are from a facility, other than an airport, powerplant, or uncontrolled sanitary landfill, that is owned or operated by a municipality with a population of under 100,000, the permit requirements in this subchapter are effective beginning March 10, 2003.

(10) The eligibility of an owner or operator of a discharge from an MS4 for funding under Title II, Title III, or Title VI of the federal Clean Water Act shall not be affected by the regulation or nonregulation of the MS4 under this subchapter.

(11) A person may petition the department to require an MPDES permit for a discharge that is composed entirely of storm water that contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters.

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: New rule III identifies the types of activities that are required to obtain a storm water discharge permit under this subchapter. The rule also clarifies which storm water discharges must obtain a permit under ARM Title 17, chapter 30, subchapter 13, and provides a procedure for waiving the permit requirements for storm water discharges associated with construction activity.

New (1)(a) through (c) recodify existing requirements for discharges associated with construction activity (five acres of total construction-related disturbance and above), industrial, mining and oil and gas activity. These activities are currently regulated as industrial activities under ARM 17.30.1332. These rules also require permits, in certain circumstances, for storm water discharges from small construction activities, (one or more acres of total construction-related disturbance but less than five acres). This is a new requirement, required by the federal phase II storm water rules. Regulation of storm water discharges from construction, industrial, mining, and oil and gas activities is necessary to protect surface water resources from contaminants associated with those activities.

New (1)(d) requires permits for storm water discharges from small municipal separate storm sewer systems (MS4s). Current phase I rules regulate discharges from large (population 250,000 and up) and medium (population 100,000 and

up) MS4s, as determined by the 1990 census. Because there are no municipalities in Montana that were in the large and medium categories as of 1990, those categories are deleted from these rules. Instead, new rule III requires permits for storm water discharges from certain small MS4s, as defined or designated under these rules. Regulation of small MS4s is required by the recent phase II amendments to the federal rules. The proposed rules require operators of regulated small MS4s to develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants from their MS4 to protect water quality. Such programs are necessary to control the discharge of pollutants from municipal separate storm sewers. The requirements for MS4s are discussed in more detail in the rationale statements for new rules II and V.

New (1)(e) requires permits for storm water discharges for which the department determines that storm water controls are needed based on wasteload allocations that are part of a total maximum daily load (TMDL). This requirement is based on federal rules, and is necessary to allow the department to require permit coverage for storm water discharges based upon water quality considerations. Designation under this subsection is expected to be rare. Only non-exempt point sources are affected, and most non-exempt point sources with potential water quality effects that are significant enough to result in a TMDL wasteload allocation will either already have an MPDES permit or, if a new source, will be required to obtain a permit under other MPDES rules.

New (1)(f) requires permits for storm water discharges that the department determines are contributing to a violation of a water quality standard or are significant contributors of pollutants to surface waters. This requirement recodifies a provision in existing rules. It is necessary in order to allow the department to require storm water controls in situations outside of the categories listed above, when needed to protect water quality.

New (2), (3), and (4) clarify which storm water discharges must obtain authorizations under general permits under this subchapter, and which discharges must obtain individual MPDES permits under subchapter 13. These subsections are necessary to identify the appropriate procedures that dischargers must follow to obtain MPDES permit coverage.

New (5) sets out new procedures for waiving the permit requirements for what EPA terms "small" construction activities. These procedures follow the federal phase II rules, and are necessary to allow for exemptions for small construction activities in cases where storm water controls

are not needed because of low rainfall erosivity or because the activity has been addressed through a TMDL or equivalent process.

New (6) is language directly from the federal rules, which identifies the original effective dates of the original phase I storm water requirements. New (8) is also federal language, which sets out the permit application deadlines for the original phase I requirements. These dates, as set out in the federal CFR, have previously been incorporated by reference in the state rules, and are now proposed to be codified as part of new ARM Title 17, chapter 30, subchapter 11. The effective dates for the phase II requirements are set out elsewhere in the rules (e.g., new rule VII identifies March 2003 as the effective date for the permit requirements for small MS4s).

NEW RULE IV EXCLUSIONS (1) In addition to the exclusions stated in ARM 17.30.1310, the following storm water discharges do not require MPDES permits:

(a) point source discharges of storm water to ground water as provided in 75-5-401(5)(g), MCA;

(b) existing or new discharges composed entirely of storm water from oil or gas exploration, production, processing, or treatment operations, or transmission facilities, unless the operation or facility:

(i) has had, at any time since November 16, 1987, a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6, 40 CFR 117.21 or 40 CFR 302.6;

(ii) contributes to a violation of a water quality standard; or

(iii) has a storm water discharge associated with construction activity, as defined in this subchapter;

(c) existing or new discharges composed entirely of storm water from mining operations, unless the discharge has come into contact with any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations.

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: New rule IV lists several types of storm water discharges that do not need a permit under this subchapter. New rule IV excludes discharges to ground water, because such discharges are excluded by the Montana water quality statutes at 75-5-401(5)(g), MCA.

Based on federal requirements, new rule IV also excludes discharges consisting entirely of storm water from oil or gas

exploration, production, processing, or treatment operations, and from transmission facilities, unless the operation or facility has had a discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6, 40 CFR 117.21 or 40 CFR 302.6, contributes to a violation of a water quality standard, or has a discharge associated with construction activity. New rule IV also excludes discharges composed entirely of storm water from mining operations unless there is a potential for the discharge to come into contact with pollutant sources. These exclusions are necessary to avoid requiring nonpolluting activities to obtain MPDES permits except in cases where there is the potential for pollution.

NEW RULE V DESIGNATION PROCEDURES: SMALL MS4S (1) For purposes of this rule, "designation" means a determination by the department that an MS4 is subject to the permit requirements of this subchapter.

(2) The department shall designate an MS4 other than those identified in [NEW RULE II(23)] if a discharge from the MS4 results in, or has the potential to result in, exceedances of water quality standards, including impairment of designated uses, or has other significant water quality impacts, including habitat and biological impacts. In making a designation under this subsection, the department shall:

(a) consider whether the MS4:

(i) has discharges to a listed impaired waterbody that is on the most recent 303(d) list;

(ii) has high growth or growth potential;

(iii) has high population density;

(iv) is contiguous to an urbanized area; and

(v) is a significant contribution of pollutants to surface waters; and

(b) place a high priority on evaluating small MS4s that have a combined permanent and seasonal population of over 10,000, as determined by the latest decennial census by the United States census bureau plus the number of commercially advertised bedroom accommodations that will allow for an overnight stay, as listed through the chamber of commerce, or any local resort or property management company.

(3) The department shall designate an MS4 other than those identified in [NEW RULE II(23)] if the MS4 contributes substantially to the pollutant loadings of a physically interconnected municipal separate storm sewer that is a regulated small MS4 under these rules.

(4) The department may designate an MS4 other than those identified in [NEW RULE II(23)] pursuant to the criteria in [NEW RULE III(1)(e) or (f)].

(5) The department may designate discharges from municipal separate storm sewers on a system-wide or on a jurisdiction-wide basis. In making its designation the department may consider the following factors:

- (i) the location of the discharge with respect to surface waters;
- (ii) the size of the discharge;
- (iii) the quantity and nature of the pollutants discharged to surface waters; and
- (iv) other relevant factors.

(6) Upon petition, the department may designate an MS4 under the appropriate criteria in these rules. The department shall make a final determination on a petition to designate a small MS4 within 180 days after receipt of the petition.

(7) An MS4 may petition the department to reduce the census estimates of the population served by the MS4 to account for storm water discharges to combined sewers, as defined in 40 CFR 35.2005(b)(11), that are treated in a publicly owned treatment works. In municipalities in which combined sewers are operated, the census estimates of population may be reduced in proportion to the fraction, based on estimated lengths, of the length of combined sewers over the sum of the length of combined sewers and municipal separate storm sewers. The MS4 shall submit the MPDES permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.

(8) The department may re-evaluate its designation of an MS4 if circumstances change or if new information becomes available.

(9) The department may waive the permit requirements of this subchapter for an MS4 identified in [NEW RULE II(23)] if the MS4 demonstrates to the department that the MS4 has existing storm water quality control programs that are equivalent to the six minimum control measures set out in [NEW RULE VII].

(10) The department may waive the permit requirements of this subchapter for an MS4, which would otherwise be regulated because it is located within an urbanized area, if the MS4 serves a population of under 1,000 and both of the following criteria are met:

- (a) discharges from the MS4 are not contributing substantially to the pollutant loadings of a physically interconnected regulated MS4; and

- (b) storm water controls are not needed for the MS4 based on wasteload allocations that are part of an EPA-approved or established TMDL that addresses the pollutants of concern.

(11) The department may waive the permit requirements of this subchapter for an MS4, which would otherwise be regulated because it is located within an urbanized area, if the MS4 serves a population of between 1,000 and 10,000 and both of the following criteria are met:

(a) the department has evaluated all surface waters, including small streams, tributaries, lakes, and ponds, that receive a discharge from the MS4 and has determined that storm water controls are not needed based on wasteload allocations that are part of an EPA-approved or established TMDL that addresses the pollutants of concern or, if a TMDL has not been developed or approved, an equivalent analysis that determines sources and allocations for the pollutants of concern;

(i) for purposes of this subsection, pollutants of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity, or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the MS4; and

(b) the department has determined that current and future discharges from the MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

(12) The department shall at least once every five years review all waivers granted under this rule to determine whether any of the information required for granting the waiver has changed. The department shall consider a petition to review a waiver if the petitioner provides evidence that the information required for granting the waiver has substantially changed.

(13) The department may designate an MS4 for which the permit requirement is waived under this rule if circumstances change or new information becomes available.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

REASON: As stated in the rationale for new rule II (Definitions), these rules require certain small municipal separate storm sewer systems (MS4s) to obtain MPDES permits, in order to control the discharge of pollutants from municipal storm sewers. Several municipal systems in Montana are designated in new rule II as required to obtain MPDES permits.

New rule V contains procedures for deregulating designated MS4s if they show that they already have a storm water control

program that meets the minimum requirements set out in the federal phase II rules. This deregulation procedure is necessary to avoid permitting MS4s that do not need additional storm water controls.

New rule V also contains MS4 designation criteria for evaluating MS4s in addition to those listed in new rule II. These criteria would be applicable to unregulated MS4s, which under these rules are those in municipalities with a population under 10,000 people. The criteria are based on federal requirements, and include: the possibility of discharges to listed impaired waterbodies on the most recent 303(d) list, high growth or growth potential, high population density, contiguity to an urbanized area, and significant contribution of pollutants to surface waters. An MS4 may also be designated if it is interconnected with a regulated MS4. These procedures are necessary to allow the department to address municipal storm sewer pollution problems in special circumstances.

New rule V also contains procedures for designation of MS4s in response to petitions, and for changing a determination if circumstances change or if new information becomes available. These procedures are necessary to allow the department to respond to changing circumstances or new information.

Based on federal requirements, new rule V also contains two procedures for waiving the permit requirement for MS4s located within urbanized areas. Separate procedures are set out for jurisdictions with a population under 1,000, and for those with populations over 1,000 but under 10,000. These procedures are necessary to exempt relatively small MS4s from the permit requirement in appropriate circumstances.

NEW RULE VI APPLICATION PROCEDURES: GENERAL (1) This rule does not apply to storm water discharges associated with construction activity. The application procedures for such discharges are set out in [NEW RULE VIII].

(2) When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

(3) Any person proposing a new point source discharge of storm water shall submit a complete application, as provided in (5), at least 30 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the department. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 30-day requirement to avoid delay.

(4) Permittees of point source discharges of storm water with currently effective authorizations under a general permit

shall submit a new application 30 days before the existing permit expires. The department may extend this deadline but may not extend it beyond the permit expiration date.

(5) The department may not issue an authorization under a general permit until it has received a complete application.

(a) An application for authorization under a general permit is complete when the department receives:

(i) a department application form, with the information required in (6), and a completed SWPPP. Both the application and SWPPP must be signed as provided in ARM 17.30.1323; and

(ii) the permit fee required in ARM 17.30.201.

(b) The completeness of any application for a permit must be judged by the department independently of the status of any other permit application or permit for the same facility or activity.

(c) A SWPPP is not required for small MS4s.

(6) Applicants shall provide the following information to the department, using the application form provided by the department:

(a) a description of the nature of the business or activity that requires authorization for a point source discharge of storm water under an MPDES general permit;

(b) the name and mailing address of the owner or operator;

(c) the location of the facility or activity for which the application is submitted;

(d) a facility or activity contact person and telephone number;

(e) for industrial or mining and oil and gas activities, the standard industrial classification (SIC) codes that best reflect the principal products or services provided by the facility;

(f) a description of point source discharges of storm water including an indication of drainage patterns and receiving surface waters;

(g) a listing of all permits and construction approvals received or applied for from state or federal regulatory agencies;

(h) a copy of a USGS topographic quadrangle map extending one mile beyond the property boundaries of the point source discharge of storm water, depicting the facility or activity boundaries and major drainage patterns and receiving surface waters;

(i) the signature of the certifying official under ARM 17.30.1323; and

(j) any other information requested by the department.

(7) Applicants shall submit to the department a copy of the facility or activity SWPPP that provides all information

requested under the SWPPP requirements as stated in the respective general permit.

(8) Applicants shall submit to the department a certification that all point source discharges of storm water have been tested or evaluated for the presence of non-storm water discharges (other than the potential non-storm water discharges for MS4s listed in [NEW RULE VII(6)(c)(iii)]) that are not covered by an MPDES permit. If storm water sampling and analytical testing was performed as a basis for this certification, the certification must include a description of any analytical test method used, the date of any testing, and the on-site drainage points that were sampled. If a contract laboratory or consulting firm performed analyses that generated quantitative data upon which conclusions and resultant determinations are based for regulated point source discharges of storm water and potential pollutant concentrations, the identity of each laboratory or firm and the analyses performed must be provided.

(9) In addition to the information reported on the application form, applicants shall provide to the department, at its request, such other information as the department determines is reasonably necessary to assess the discharges of the facility and to determine whether to authorize the discharge under an MPDES individual or general permit.

(10) Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this subchapter for a period of at least three years from the date the application is signed.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

REASON: New rule VI sets out general requirements and procedures for applicants for MPDES storm water discharge permits under this subchapter. Special requirements for particular dischargers are set out in subsequent rules. This rule is necessary in order to inform applicants of the information and procedures that are required to obtain coverage under an MPDES storm water permit.

NEW RULE VII APPLICATION PROCEDURES, PERMIT REQUIREMENTS: SMALL MS4S (1) Owners or operators of small MS4s shall apply for authorization under an MPDES permit as provided in [NEW RULE VI] and this rule.

(a) For small MS4s in existence on [effective date of these rules], the permit requirements in this subchapter are effective beginning March 10, 2003.

(b) The owner or operator of a small MS4 that is designated after [effective date of these rules] by the department under [NEW RULE V] shall apply for authorization within 180 days of notice by the department, unless the department grants a later date.

(2) Small MS4s shall complete an application for authorization in accordance with the requirements in [NEW RULE VI]. The application must also include the following information:

(a) a description of the BMPs that the MS4 will implement for each of the six storm water minimum control measures set out in (6);

(b) identification of the measurable goals for each of the BMPs including, as appropriate, the months and years in which the MS4 will undertake required actions, including interim milestones and the frequency of the action; and

(c) the person or persons responsible for implementing or coordinating the storm water management program.

(3) A small MS4 may file its own application or may jointly submit an application with other municipalities or governmental entities. If a small MS4 intends to share responsibilities for meeting the minimum control measures with other municipalities or governmental entities, the small MS4 shall submit an application that describes which minimum control measures it will implement and identify the entities that will implement the other minimum control measures within the area served by the small MS4.

(4) The general permit may include other steps necessary to obtain permit authorization.

(5) The MPDES permit for small MS4s must require at a minimum that MS4s develop, implement, and enforce a storm water management program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the federal Clean Water Act. The storm water management program must include the minimum control measures described in (6).

(a) For purposes of this rule, narrative effluent limitations requiring implementation of BMPs are the most appropriate form of effluent limitations when designed to satisfy technology requirements (including reductions of pollutants to the maximum extent practicable) and to protect water quality. Implementation of BMPs consistent with the provisions of the storm water management program required pursuant to this rule and the provisions of the permit shall constitute compliance with the standard of reducing pollutants to the maximum extent practicable. The department shall specify a time period of up to five years from the date of the

permit or permit authorization for the MS4 to develop and implement the program.

(6) Minimum control measures include, but are not limited to:

(a) public education and outreach on storm water impacts. A small MS4 shall implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of storm water discharges on water bodies and the steps that the public can take to reduce pollutants in storm water runoff;

(b) public involvement/participation. A small MS4 shall, at a minimum, comply with state and local public notice requirements when implementing a public involvement/participation program;

(c) illicit discharge detection and elimination measures that must include the following:

(i) a small MS4 shall develop, implement and enforce a program to detect and eliminate illicit discharges into the small MS4;

(ii) a small MS4 shall:

(A) develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and locations of all outfall receiving waters;

(B) to the extent allowable under state or local law, effectively prohibit, through ordinance or other regulatory mechanism, non-storm water discharges (other than the potential non-storm water discharges for MS4s listed in [NEW RULE VII(6)(c)(iii)]) into the MS4 and implement appropriate enforcement procedures and actions;

(C) develop and implement a plan to detect and address non-storm water discharges, including illegal dumping, to the MS4; and

(D) inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste;

(iii) a small MS4 shall address the following categories of non-storm water discharges or flows (i.e., illicit discharges) only if it identifies them as significant contributors of pollutants to the MS4:

(A) water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined in [NEW RULE II(8)], uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and

wetlands, dechlorinated swimming pool discharges, and street wash water;

(B) discharges or flows from fire fighting activities are excluded from the effective prohibition against non-storm water and need only be addressed where they are identified as significant sources of pollutants to surface waters;

(d) construction site storm water runoff control measures including:

(i) a small MS4 shall develop, implement, and enforce a program to reduce pollutants in any storm water runoff to the MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of storm water discharges from construction activity disturbing less than one acre must be included in the program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the department waives requirements for a construction site in accordance with [NEW RULE III(5)], the small MS4 is not required to develop, implement, or enforce a program to reduce pollutant discharges from such sites;

(ii) the development and implementation of, at a minimum:

(A) an ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under state or local law;

(B) requirements for construction site operators to implement appropriate erosion and sediment control BMPs;

(C) requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(D) procedures for site plan review that incorporate consideration of potential water quality impacts;

(E) procedures for receipt and consideration of information submitted by the public; and

(F) procedures for site inspection and enforcement of control measures;

(e) post-construction storm water management in new development and redevelopment. A small MS4 shall:

(i) develop, implement, and enforce a program to address storm water runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the MS4. The program must ensure that controls are in place that would prevent or minimize water quality impacts;

(ii) develop and implement strategies that include a combination of structural and non-structural BMPs appropriate for the community;

(iii) develop and implement an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under state or local law; and

(iv) ensure adequate long-term operation and maintenance of BMPs;

(f) pollution prevention and good housekeeping measures for municipal operations. A small MS4 shall develop and implement an operation and maintenance program that includes a training component and has the goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, the state of Montana, or other organizations, the program must include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance.

(7) A small MS4 may share the responsibility to implement the minimum control measures with another entity in order to satisfy their MPDES permit obligations to implement a minimum control measure.

(a) Shared responsibility is allowed only if:

(i) the other entity implements the control measure;

(ii) the particular control measure, or component thereof, is at least as stringent as the corresponding MPDES permit requirement; and

(iii) the other entity agrees to implement the control measure on behalf of the owners or operators of the regulated small MS4.

(b) In the reports submitted under [NEW RULE VII(14)], the owners or operators must specify that they are relying on another entity to satisfy some of their permit obligations, unless the other entity is responsible to file the reports.

(c) The MS4 remains responsible for compliance with its permit obligations if the other entity fails to implement the control measure (or component thereof). The MS4 should enter into a legally binding agreement with the other entity in order to minimize uncertainty about compliance with the MPDES permit.

(8) The department may specify in an MPDES permit that another governmental entity is responsible for implementing one or more of the minimum control measures for a small MS4. If the department does so, the MS4 is not required to include such minimum control measures in its storm water management program. The department may modify an MPDES permit or permit

authorization to require an MS4 to implement a minimum control measure if the other entity fails to implement it.

(9) If a qualifying local program requires a small MS4 to implement one or more of the six minimum control measures of this rule, the department may include conditions in the MPDES permit or permit authorization that direct the MS4 to follow that qualifying program's requirements rather than the minimum control measures requirements of this rule. A "qualifying local program" is a local municipal storm water management program that imposes the relevant minimum control measures stated in (6).

(10) A small MS4 is not required to meet any measurable goals identified in its application in order to demonstrate compliance with the minimum control measures in (6)(c) through (f) if EPA or the department has not provided a menu of BMPs that addresses each such minimum measure. In that event, the MS4 shall comply with other requirements of the general permit, including good faith implementation of BMPs designed to comply with the minimum control measures.

(11) The department may include, in an authorization issued to a small MS4, limitations that are more stringent than those contained in the general permit. Such limitations must be based on a TMDL or equivalent analysis that determines such limitations are needed to protect water quality.

(12) A small MS4 shall evaluate program compliance, the appropriateness of its identified BMPs, and progress towards achieving its identified measurable goals.

(13) A small MS4 shall keep records required by the MPDES permit for at least three years and shall provide its records to the department upon request. Records, including a description of the storm water management program, must be made available to the public at reasonable times during regular business hours. Provisions for the confidentiality of records are stated in ARM 17.30.1321.

(14) Unless a small MS4 relies on another entity to satisfy its MPDES permit obligations under [NEW RULE VII(7)], the MS4 shall submit annual reports to the department for the first permit term. For subsequent permit terms, the MS4 shall submit reports in years two and four unless the department requires more frequent reports. The annual report must:

(a) describe the status of compliance with permit conditions, the appropriateness of the identified BMPs, and progress towards achieving the identified measurable goals for each of the minimum control measures;

(b) include information collected and analyzed, including monitoring data, if any, during the reporting period;

(c) summarize the storm water activities that the MS4 plans to undertake during the next reporting cycle;

(d) describe changes in any identified BMPs or measurable goals for any of the minimum control measures; and

(e) notify the department if the MS4 is relying on another governmental entity to satisfy some of its permit obligations.

(15) The department may issue permits for small MS4s that are designated under [NEW RULE V] on a system-wide basis, jurisdiction-wide basis, watershed basis, or other appropriate basis, or may issue permits for individual discharges.

(16) An owner or operator of a small municipal separate storm sewer system may petition the department to require a separate MPDES permit for any discharge into the small municipal separate storm sewer system.

(17) When, for the discharges listed in (1), more than one operator discharges storm water through a non-municipal or nonpublicly owned separate storm sewer system, the department may either issue a single permit to all dischargers as co-permittees, or issue separate permits to each discharger on the system. If the department issues a single permit to all dischargers on the system, each co-permittee shall be responsible only for the portion of the discharge under its ownership or control.

(a) This subsection applies to storm water discharges associated with industrial, mining, oil and gas, and construction activity that will result in construction-related disturbance of five acres or more of total land area.

(b) If there is more than one operator of a single system of such non-municipal conveyances, all operators of storm water discharges must submit applications.

(18) Each permit covering more than one operator must identify the effluent limitations, or other permit conditions if any, that apply to each operator.

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: New rule VII sets out federal requirements and procedures for MS4 applicants for MPDES storm water discharge permits under this subchapter. This rule is necessary in order to inform MS4 applicants of the information and procedures that are required to obtain coverage under an MPDES storm water permit.

NEW RULE VIII NOTICE OF INTENT PROCEDURES: CONSTRUCTION ACTIVITY (1) A person who discharges or proposes to discharge storm water associated with construction activity

shall submit to the department a notice of intent (NOI) as provided in this rule.

(a) The NOI must be signed by the owner of the project or by the operator, or by both the owner and the operator if both have responsibility to ensure that daily project activities comply with the SWPPP and other general permit conditions. If more than one operator is responsible for compliance with the SWPPP and general permit each operator shall sign the NOI.

(i) persons signing an NOI shall comply with the permit application signature requirements set out in ARM 17.30.1323.

(b) For storm water discharges associated with construction activity that result in construction-related disturbance of less than five acres of total land area, the permit requirements in this subchapter are effective beginning March 10, 2003.

(2) An NOI must be completed on an NOI form developed by the department. The NOI must be completed in accordance with the requirements stated in the general permit, and must include the legal name and address of the operators, the facility name and address, the type of facility or discharges, and the receiving surface waters.

(a) An NOI must include a narrative description of:

(i) the location (including a map) and the nature of the construction activity;

(ii) the total area of the site and the area within the site that is expected to undergo excavation during the life of the permit;

(iii) proposed measures, including BMPs, to control pollutants in storm water discharges during construction, including a brief description of applicable local erosion and sediment control requirements;

(iv) proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable local erosion and sediment control requirements;

(v) for a storm water discharge that will result in construction-related disturbance of five acres or more of total land area, an estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and

(vi) the name of the receiving surface waters.

(3) An NOI must be accompanied by a SWPPP, which must be completed in accordance with the requirements identified in the general permit including the following:

(a) the SWPPP must be signed by all signatories to the NOI; and

(b) the SWPPP must require the identification and assessment of potential pollutant sources that could be exposed to storm water runoff, and must contain provisions to implement BMPs, in accordance with the general permit.

(4) Authorization to discharge under the general permit is effective upon receipt by the department of a complete notice of intent and SWPPP, together with the permit fee, by the date on which construction-related disturbance is initiated.

(5) The department may include, in the general permit for storm water discharges associated with construction activity, conditions that incorporate by reference qualifying local erosion and sediment control program requirements. A "qualifying local erosion and sediment control program" is one that includes the elements listed in (6) and all additional requirements necessary to achieve the applicable technology-based standards of best available technology (BAT) and best conventional technology (BCT). If a qualifying local program does not include one or more of the elements in (6), then the department shall include those elements as conditions in the permit.

(6) A qualifying local erosion and sediment control program includes requirements for construction site operators to:

(a) implement appropriate erosion and sediment control BMPs;

(b) control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(c) develop and implement a SWPPP. A SWPPP includes site descriptions, descriptions of appropriate control measures, copies of approved local requirements, maintenance procedures, inspection procedures, and identification of non-storm water discharges; and

(d) submit a site plan for review that incorporates consideration of potential water quality impacts.

(7) Permittees shall keep records of all data used to complete the NOI and SWPPP and any supplemental information submitted under this subchapter for a period of at least three years from the date the NOI is signed.

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: New rule VIII sets out requirements and procedures for applicants for MPDES permits for storm water discharges associated with construction activity. As required by 75-5-401(1)(c), MCA, discharges associated with construction activity must obtain permit coverage through a notice of intent (NOI) process. The notice must include a signed storm water pollution prevention plan (SWPPP) that requires the applicant to characterize potential pollutant sources at the site and to develop and implement best management practices (BMPs) in accordance with the general permit.

This rule implements the statutory NOI process. The NOI process is necessary to provide a streamlined application process for construction activity, in which numerous similar sites require permits each season.

NEW RULE IX INDUSTRIAL NO-EXPOSURE CERTIFICATION

(1) Discharges composed entirely of storm water are not regulated as discharges associated with industrial activity or discharges associated with mining and oil and gas activity if there is no exposure of industrial materials and activities to rain, snow, snowmelt, and/or runoff, and the discharger satisfies the conditions in this rule.

(a) For purposes of this rule, "no exposure" means that all industrial materials and activities are protected by a storm-resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, byproducts, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, or waste product.

(2) To qualify for the exclusion in this rule, the owner or operator of the discharge must:

(a) except as provided in (3), provide a storm-resistant shelter to protect industrial materials and activities from exposure to rain, snow, snowmelt, and/or runoff;

(b) complete and sign, in accordance with ARM 17.30.1323, a certification form developed by the department that indicates there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in (3);

(c) submit the signed certification to the department once every five years;

(d) allow the department to inspect the facility to determine compliance with the no exposure conditions;

(e) allow the department to make no-exposure inspection reports available to the public upon request; and

(f) for facilities that discharge through an MS4, submit a copy of the certification of no exposure to the MS4 operator, and allow inspection and public reporting by the MS4 operator.

(3) A storm resistant shelter is not required for:

(a) drums, barrels, tanks and similar containers that are tightly sealed, if the containers are not deteriorated and do not leak. For purposes of this rule, "sealed" means banded or otherwise secured and without operational taps or valves; or

(b) final products, other than products that would be mobilized in storm water discharge (e.g., rock salt).

(4) The exclusion in this rule is subject to the following limitations:

(a) the exclusion is not available for storm water discharges associated with construction activity as defined in this subchapter;

(b) the exclusion is available on a facility-wide basis only, not for individual outfalls. If a facility has some discharges of storm water that would otherwise be no-exposure discharges, permit requirements should be adjusted accordingly;

(c) if circumstances change and industrial materials or activities become exposed to rain, snow, snowmelt, and/or runoff, the conditions for this exclusion no longer apply. In such cases, the discharge becomes subject to enforcement for unpermitted discharge. Any conditionally exempt discharger who anticipates changes in circumstances should apply for and obtain permit authorization prior to the change of circumstances; and

(d) the department may deny an exclusion under this rule if it determines that the discharge causes, has a reasonable potential to cause, or contributes to a violation of a water quality standard, including designated uses.

(5) A no-exposure certification must contain the following information, at a minimum, to aid the department in determining whether a facility qualifies for the no-exposure exclusion:

(a) the legal name, address and phone number of the discharger;

(b) the facility name and address, the county name, and the township, range, section and 1/4 section where the facility is located;

(c) certification that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:

(i) use, storage or cleaning of industrial machinery or equipment, and areas where residuals from such activities remain and are exposed to storm water;

(ii) materials or residuals on the ground or in storm water inlets from spills/leaks;

(iii) materials or products from past industrial activity;

(iv) material handling equipment, except for adequately maintained vehicles;

(v) materials or products during loading/unloading or transporting activities;

(vi) materials or products stored outdoors, except final products intended for outside use (e.g., new cars), if exposure to storm water does not result in the discharge of pollutants;

(vii) materials contained in open, deteriorated or leaking storage drums, barrels, tanks and similar containers;

(viii) materials or products handled/stored on roads or railways owned or maintained by the discharger;

(ix) waste material, except waste in covered, non-leaking containers (e.g., dumpsters);

(x) application or disposal of process wastewater, unless otherwise permitted; and

(xi) particulate matter or visible deposits of residuals from roof stacks/vents not otherwise regulated, i.e., under an air quality control permit, and evident in the storm water outflow;

(d) the following certification statement, which must be signed in accordance with the signatory requirements of ARM 17.30.1323: "I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of "no exposure" and obtaining an exclusion from MPDES storm water permitting; and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document (except as allowed under [NEW RULE IX(3)]). I understand that I am obligated to submit a no-exposure certification form once every five years to the department and, if requested, to the operator of the local MS4 into which this facility discharges (where applicable). I understand that I must allow the department, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request.

I understand that I must obtain coverage under an MPDES

permit prior to any point source discharge of storm water from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

REASON: Based on federal phase II rules, new rule IX provides a procedure for dischargers of storm water from industrial, mining, and oil and gas operations to certify that there is no potential for storm water runoff from their facility to become contaminated with pollutants. This rule provides a permit "off-ramp" process similar to those provided for MS4s in new rule V and for construction activities that disturb less than five acres in new rule III. This procedure is necessary to avoid permitting facilities that do not need storm water controls.

NEW RULE X TRANSFER OF PERMIT COVERAGE (1) General permit authorizations and NOIs for storm water discharges regulated under this subchapter are not transferable to a new owner or operator, including when the name and/or legal ownership of a party changes, unless the new or revised owner or operator of a facility or activity submits a new application or NOI form, a revised SWPPP if necessary, and other revised documents or information that are necessary to indicate the current conditions or status. Persons requesting transfer of general permit coverage must comply with the application procedures stated in the respective general permit and must pay a fee. If the new permittee develops a new SWPPP, the new permittee shall implement the old SWPPP until the new SWPPP is developed and implemented.

AUTH: 75-5-201, 75-5-401, MCA
IMP: 75-5-401, MCA

REASON: New rule X provides that general permit authorizations and NOIs are not transferable unless the new permittee submits a new application or NOI form together with

all appropriate supporting information. This rule is necessary to inform transferees of required procedures, and to ensure that transferees are qualified for coverage under the general permit.

4. Concerned persons may submit their data, views or arguments, either orally or in writing, at the hearing. Written data, views or arguments may also be submitted to the Board of Environmental Review, P.O. Box 200901, Helena, Montana 59620-0901, faxed to (406) 444-4386 or emailed to the Board Secretary at ber@state.mt.us and must be received no later than 5:00 p.m., November 27, 2002. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Thomas Bowe, attorney for the Board, has been designated to preside over and conduct the hearing.

6. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to the Board Secretary at ber@state.mt.us or may be made by completing a request form at any rules hearing held by the Board.

7. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

By: Joseph W. Russell
JOSEPH W. RUSSELL, M.P.H.,
Chairman

Reviewed by:

James M. Madden
JAMES M. MADDEN, Rule Reviewer

Certified to the Secretary of State, October 7, 2002.